

COMMENTS

This REPLACEMENT AMENDMENT is substantively identical to the Office Action Response filed by Applicant on April 29, 2003. In accordance with a telephone message from Examiner Lagman to Applicant's counsel, Glen Nuttall, on April 9, 2004, Applicant understands that the previously-filed Office Action Response was inappropriate under 37 C.F.R. § 1.173 due to some formal matters related to how the claims were presented. Accordingly, please replace the Response filed on April 29, 2003 with the present Replacement Amendment.

The arguments presented below, and the amendments to Claims 42, 51, 62 and 72 presented above, are identical to the arguments and amendments presented in the previously-filed Office Action Response.

All Claims Are Patentable Over Gatewood

The Examiner rejected Claims 42-49, 51-69 and 71-74 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,268,932 to Gatewood. Applicant has amended some of the claims to increase their clarity. Applicant respectfully traverses the Examiner's rejection of the claims and disagrees with the Examiner's characterization of Gatewood

Gatewood's water tunnel circulates water again and again around the 360° tunnel. High velocity water is injected through the feed pipes 3. "When it completes its circuit it encounters the incoming stream which gives it an additional impulse sufficient to drive it around the circuit again." Col. 1, ll. 40-43. Thus, water circulates several times around the tunnel. Further, "When the tunnel is filled to the level of annular closure plate 4 it flows out at the ends or at such drains as may be provided. One such drain is shown under the trackway in Figure 3." Col. 1, ll. 47-50. Thus, water exits the Gatewood tunnel in a random fashion as overflow or drainage.

The Examiner stated that Gatewood teaches "a reservoir of water, which may be located under the trackway." Office Action, para. 2. Applicant respectfully contends that Gatewood never teaches or suggests such a reservoir. Further, the Examiner's conjecture about where such a reservoir "may be" located is not supported by Gatewood.

Claim 42

Amended Claim 42 recites, *inter alia*, a flow surface having a shape adapted so that a flow of water curls over a platform or walkway and then flows off of said flow surface and splashes into said reservoir after a single pass over said flow surface, simulating a desired wave form.

As discussed above, Gatewood is specifically designed so that water flows again and again around the tunnel. As such, Gatewood specifically teaches against at least this limitation of Claim 42.

Claim 51

Amended Claim 51 recites, *inter alia*, a pump for providing a flow of water from a reservoir onto a flow surface, the pump and flow surface adapted so that said flow of water flows upwardly onto said inclined slope substantially conforming to said flow surface and flowing over said platform or walkway and then back into the reservoir, said flow surface and said reservoir being configured so that substantially all of said flow of water is directed from said flow surface to said reservoir after a single pass over the flow surface.

As discussed above, Gatewood is specifically designed so that water flows again and again around the tunnel. Further, Gatewood never teaches or suggests a reservoir, and further never teaches drawing water from and returning water to such a reservoir. As such, Gatewood specifically teaches against at least these limitations of Claim 51.

Claim 62

Amended Claim 62 recites a method for creating a walk-through water sculpture, comprising, *inter alia*, providing a reservoir of water generally below a walkway or platform, and directing a flow of water from the reservoir onto a flow surface so that substantially the entire flow of water substantially conforms to the flow surface and curls over the walkway or platform and into the reservoir.

As discussed above, Gatewood never teaches or suggests such a reservoir. Further, Gatewood teaches portions of overflow water overflowing the closure plate 4 at the ends of the apparatus or removing portions of water via drains. See col. 1, ll. 47-50. As such, only random portions of water are removed from the tunnel. Gatewood does not teach or suggest at least these limitations of Claim 62.

Claim 68

Claim 68 recites, *inter alia*, a flow surface having a generally cylindrical portion extending generally around a platform or walkway, the flow surface not forming a complete cylinder, and at least one water injector for directing a flow of water onto the flow surface at a location generally adjacent a first side of the walkway in a manner so that the water flows along

the flow surface over the walkway and flows into a reservoir at a location generally adjacent a second side of the walkway.

All of the figures of Gatewood depict the apparatus as a full 360° tunnel. Also, Gatewood is specifically designed so that water flows again and again around the tunnel. Further, as discussed above, Gatewood does not teach or suggest a reservoir. Still further, Gatewood does not teach or suggest directing a flow of water adjacent a first side of the walkway and the water flows into a reservoir adjacent a second side of the walkway. As such, Gatewood does not teach or suggest at least these limitations of Claim 68.

Claim 72

Claim 72 recites, *inter alia*, a flow surface entry portion disposed generally adjacent a first side of a platform and a flow surface exit portion disposed generally adjacent a second side of the platform, and at least one water injector for directing a flow of water onto the entry portion in a manner so that water flows along the flow surface over the platform to the exit portion, from which substantially the entire flow of water exits the flow surface and flows into a water receiving basin.

As discussed above, Gatewood never teaches or suggests such a water receiving basin. Further, Gatewood teaches portions of overflow water overflowing the closure plate 4 at the ends of the apparatus or removing portions of water via drains. See col. 1, ll. 47-50. Thus, only random portions of water are removed from the Gatewood tunnel during operation. Further, Gatewood does not show an entry portion adjacent a first side of a platform and an exit portion adjacent a second side of the platform. As such, Gatewood does not teach or suggest at least these limitations of Claim 72.

General Discussion of Claims

Gatewood does not teach or suggest all of the limitations of the independent claims specifically discussed above. As such, each of these claims is currently in condition for allowance. The claims that depend from these allowable independent claims recite further patentable subject matter such as, for example, water from the water receiving basin being directed back to the water injector so as to be again directed over the flow surface; forming the flow of water into a sheet flow; and the platform or walkway being supported by support members extending upwardly from the reservoir. As such, the dependent claims, when considered as a whole, are patentable over the cited reference.

Mason is Not Prior Art

The Examiner briefly referred to the Mason reference near the conclusion of para. 2 of the Office Action. However, as Applicant and Examiner Lagman discussed in the telephone interview of October 3, 2002, and as Applicant clarified in the Response to Office Action filed October 3, 2002, the Mason reference is not prior art to the above-captioned application.

New Claims

The Examiner objected to Claim 70, but indicated that this claim would be allowable if rewritten into independent form. New Claim 82 comprises Claim 70 rewritten into independent form, and thus is currently in condition for allowance. New Claims 83-84 depend from Claim 82 and recite further patentable subject matter. All of the new claims recite patentable subject matter and are considered to be in condition for allowance.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejections and objections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney in order to resolve such issue promptly.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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By: 

Glen L. Nuttal

Registration No. 46,188

Attorney of Record

Customer No. 20,995

(949) 760-0404